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Supreme Court of the United States

OCTOBER TERM, 1995

EQUALITY FOUNDATION OF GREATER CINCINNATI, INC., RICHARD
BUCHANAN, CHAD BUSH, EDWIN GREENE, RITA MATHIS, ROGER
ASTERINO, AND H.O.M.E., INC.,

Petitioners,

—v.—

THE CITY OF CINCINNATI, EQUAL RIGHTS NOT SPECIAL RIGHTS,
MARK MILLER, THOMAS E. BRINKMAN, JR., AND ALBERT MOORE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

**BRIEF OF PEOPLE FOR THE AMERICAN WAY, ASIAN
AMERICAN DEFENSE AND EDUCATION FUND, GAY AND
LESBIAN ADVOCATES AND DEFENDERS, HUMAN RIGHTS
CAMPAIGN FUND, JAPANESE AMERICAN CITIZENS
LEAGUE, NATIONAL CENTER FOR LESBIAN RIGHTS,
NATIONAL LESBIAN AND GAY LAW ASSOCIATION, NOW
LEGAL DEFENSE AND EDUCATION FUND, PUERTO RICAN
LEGAL DEFENSE AND EDUCATION FUND, AND UNION OF
AMERICAN HEBREW CONGREGATIONS, AS *AMICI CURIAE*
IN SUPPORT OF A PETITION FOR WRIT OF CERTIORARI**

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INTEREST OF AMICI CURIAE*

PEOPLE FOR THE AMERICAN WAY (People For) is a nonpartisan, education-oriented citizens' organization established to promote and protect civil and constitutional rights. Founded in 1980 by a group of religious, civic and educational leaders devoted to our nation's heritage of tolerance, pluralism and liberty, People For now has over 300,000 members across the country, including in Ohio. People For has been actively involved in efforts nationwide to combat discrimination and promote equal rights, including efforts to protect the civil rights of gay men and lesbians. People For regularly supports the enactment of civil rights legislation, participates in civil rights litigation, and conducts programs and studies directed at reducing problems of bias, injustice and discrimination. The instant case is of particular importance to People For because the Court of Appeals' decision improperly embraced the unacceptable concept that gay men and lesbians are second-class citizens who may be excluded from this country's political processes and denied its legal protections. This Court should grant *certiorari*, reverse that decision, and affirm the fundamental principle that all persons, including gay men and lesbians, are entitled to the equal protection of the law.

* All *amici* filed briefs *amicus curiae* with this Court in *Romer v. Evans*, No. 94-1039.

THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND (AALDEF) is a civil rights organization founded in 1974 that addresses critical issues facing Asian Americans through community education, advocacy, and litigation involving immigrants' rights, voting rights, labor and employment rights, and environmental justice. AALDEF also represents victims of anti-Asian violence and Japanese Americans who were incarcerated in U.S. camps during World War II. AALDEF supports the fundamental rights of all persons to equal access and participation in the political process.

GAY AND LESBIAN ADVOCATES & DEFENDERS (GLAD) is a non-profit public interest law firm which represents gay men, lesbians, and persons with HIV disease in impact litigation throughout New England. GLAD has participated as counsel or as *amicus curiae* in many cases in both the state and federal courts in which the constitutional rights of lesbian and gay individuals was at issue. Thus, GLAD is well qualified to appear as *amicus curiae* before this Court.

THE HUMAN RIGHTS CAMPAIGN FUND (HRCF), the nation's largest lesbian and gay political organization, works to end discrimination, secure equal rights, and protect the health and safety of all Americans. HRCF lobbies the federal government on gay, lesbian and AIDS issues; educates the general public; participates in election campaigns; organizes volunteers; and provides expertise and training at the state and local level.

THE JAPANESE AMERICANS CITIZENS LEAGUE (JACL), founded in 1929, is the oldest and largest Asian Pacific American civil rights organization in the nation. The mission of the JACL is to uphold the civil and human rights of Americans of Japanese ancestry and all people. The JACL

played a prominent role in obtaining redress for Japanese Americans who were interned in concentration camps during World War II. The JACL has also worked to combat discrimination on the basis of race, ethnicity, religion, gender, and sexual orientation, to reduce the incidence of hate crimes, and to protect the rights of all persons to equal participation in the political process.

THE NATIONAL CENTER FOR LESBIAN RIGHTS (NCLR) is a non-profit public interest law firm founded in 1977 and devoted to the legal concerns of women and men who encounter discrimination on the basis of their sexual orientation. NCLR is particularly well-suited to offer *amicus* assistance to this Court in this matter as NCLR attorneys have a litigation history which demonstrates a strong commitment to securing the civil rights of lesbians and gay men. NCLR participated as *amicus* before this Court in *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, et. al.* NCLR attorneys have litigated numerous cases in appellate and trial courts where the rights of lesbians and gay men are threatened.

THE NATIONAL LESBIAN AND GAY LAW ASSOCIATION (NLGLA) was founded in 1988 as a national association of lawyers, judges, and other legal professionals, law students and affiliated lesbian and gay legal organizations. Its mission is to promote justice within the legal profession for lesbians and gay men in all their diversity. NLGLA has been an affiliate of the American Bar Association since August 1992. It has participated as *amicus curiae* in numerous state and federal court actions involving or implicating the rights of lesbians and gay men.

THE NOW LEGAL DEFENSE AND EDUCATION FUND (NOW LDEF) is a leading national non-profit civil rights organization that provides a broad range of legal and educational services in support of women's efforts to eliminate gender-based discrimination. NOW LDEF was founded as an independent organization in 1970 by leaders of the National Organization for Women. NOW LDEF opposes Issue 3 because it jeopardizes the ability of any group that suffers discrimination to obtain civil rights protection.

THE PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND (PRLDEF) was founded in 1972 to protect and ensure the civil rights of Puerto Ricans and other Latinos. PRLDEF is committed to equal protection of the laws for all persons and strongly opposes discrimination against lesbian, gay, and bisexual people, including any attempt to restrict political participation on the basis of sexual orientation.

THE UNION OF AMERICAN HEBREW CONGREGATIONS (UAHC) is a religious and educational organization founded in 1873 and dedicated to the principle of Reform Judaism. The UAHC adopted a resolution in 1977 calling for the end of discrimination based on sexual orientation and has been a consistent supporter of the rights of gay men and lesbians for freedom and dignity. The President of the UAHC, Rabbi Alexander Schindler, has publicly noted the obligation of Jews to remember their history in this regard: "We who were *marranos* in Madrid, who clung to the closet of assimilation and conversion in order to live without molestation . . . cannot deny the demand for gay and lesbian visibility."

The parties have consented to the filing of this brief; their letters to that effect have been filed separately with the Court.

REASONS FOR GRANTING THE PETITION

Amici organizations file this brief in support of the petition for a writ of certiorari in *Equality Foundation et al. v. City of Cincinnati et al.*, No. 95-239, which is currently pending before the Court. At issue in *Equality Foundation* is the constitutionality of a charter amendment which bars the City of Cincinnati from adopting or enforcing any ordinance, regulation, rule or policy that would, *inter alia*, provide "protected status" to lesbians, gay men and bisexuals. The measure, known as Issue 3, is virtually identical to the Colorado constitutional amendment, known as Amendment 2, currently before the Court in *Romer v. Evans*, No. 94-1039, in that it imposes a wholesale ban on government from providing legal protections (such as the prohibition of discrimination in employment) to a targeted class of citizens on the same basis as it provides those protections to all others. For the reasons stated in their respective briefs filed with the Court in the similar case of *Romer v. Evans*, *amici* believe that the issues presented in *Equality Foundation* are of critical importance and merit this Court's review.

Additionally, this case squarely presents the Court with the opportunity to address a second question, also presented and briefed in *Romer*, of whether measures such as Issue 3 lack a rational basis and therefore violate the Equal Protection Clause even under the Court's most lenient standard of review. Here, after a full trial, the district court held that Issue 3 impermissibly gives effect to private prejudice and does not rationally further a legitimate government interest. The Sixth Circuit avoided any discussion of the district court's finding of private prejudice but reversed and held that Issue 3 furthers various legitimate governmental interests. Because the courts below directly addressed the question of whether Issue 3 lacked a rational basis, plenary review of the Sixth Circuit's

ruling on the basis of a complete record will enable the Court fully to consider the important question, also present in *Romer*, of the relationship between private prejudice and rational basis review under the Equal Protection Clause. *Amici* would welcome the opportunity to brief the Court on the merits of why this charter amendment does not rationally further any legitimate government interest, should the Court grant review in this case.

CONCLUSION

For all of the reasons stated above, *amici* urge this Court to grant the Petition and issue a Writ of Certiorari to the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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